

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF BLACK HILLS/ )**  
**NEBRASKA GAS UTILITY COMPANY, LLC )**  
**D/B/A BLACK HILLS ENERGY, OMAHA, ) APPLICATION NO. NG \_\_\_\_\_**  
**SEEKING A GENERAL RATE INCREASE FOR )**  
**BLACK HILLS ENERGY'S RATE AREAS ONE )**  
**TWO AND THREE (CONSOLIDATED) )**

**APPLICATION FOR RATE INCREASE**

Comes now Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy ("Black Hills Energy"), pursuant to the State Natural Gas Regulation Act, *66 Neb. Rev. Stat. § 66-1801 et seq. (2003)* (the "Act") and the Rules and Regulations of the Commission, Neb. Admin. Code, Title 291, Chapter 9 Pipeline Common Carriers Rules and Regulations ("Chapter 9"), for a consolidated request to change the rates for natural gas service provided to Black Hills Energy's customers located within Black Hills Energy's Rate Area One, Rate Area Two, and Rate Area Three (Consolidated).

In support of its application, Black Hills Energy states as follows:

**I. Description of Black Hills Energy**

A. In 1985 UtiliCorp United, Inc., now known as Black Hills Energy, acquired the natural gas distribution assets of Peoples Natural Gas, division of InterNorth, Inc. At that time, regulation over rates, terms, and conditions of service was vested in each municipality in which it provided service. In 1987, Aquila divided its Nebraska service territory into new Rate Areas as required by the Municipal Natural Gas Regulation Act ("MNGRA") Neb. Rev. Stats. § 19-4607, et seq. (2000). These Rate Areas were approved by the Commission pursuant to its authority under the Act.

B. As a result of Aquila's acquisition of Minnegasco's Nebraska properties in 1993, Aquila's rate area boundaries were modified effective January 1, 1994. Ten Municipalities are currently located in Black Hills Energy's Rate Area One.<sup>1</sup> Rate Area One consists of approximately 43,103 customers. Black Hills Energy's Rate Area Two consists of the City of Lincoln and the adjacent communities of Walton and Cheney, Nebraska. Rate Area Two consists of approximately 93,203 customers. Rate Area Three consists of ninety-five municipalities in eastern Nebraska. Each of these communities is as listed on Index No. 3 of Black Hills Energy's Tariff on file with the Public Service Commission of Nebraska. Rate Area Three consists of approximately 59,421 customers.

C. Effective July 14, 2008, the natural gas and electric assets of Aquila located in the states of Colorado, Iowa, Kansas, and Nebraska transferred to Black Hills Corporation. The Nebraska Public Service Commission granted approval of the transfer by Order dated October

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<sup>1</sup> Those 10 communities are Plattsmouth, Bellevue, Ralston, La Vista, Papillion, Gretna, Waterloo, Elkhorn, Valley, and Blair, Nebraska.

16, 2007 in NPSC Docket No. NG-0044, (citation omitted). Black Hills Corporation established Black Hills/Nebraska Gas Utility Company, LLC as a separate legal entity for the natural gas assets located in Nebraska. Black Hills/Nebraska Gas Utility Company, LLC conducts its business in Nebraska under the trade name of "Black Hills Energy."

D. Among other things, Black Hills Corporation committed to retain the Aquila employees located in Nebraska, maintain Aquila's operations procedures, maintain the Lincoln call center and provide for a backup center, continue Aquila's activities to meet federal safety requirements, and establish a corporate structure that includes ring-fencing protection. Black Hills Energy has maintained those commitments, along with other commitments set forth in the October 16, 2007 Commission transfer approval order.

E. Black Hills Energy's net investment or rate base in its Nebraska assets totals approximately \$168.4 million. Black Hills Corporation has approximately 2,100 employees for all of its operations, and it employs approximately 418 employees, who are located in Nebraska. Black Hills Energy's Nebraska operations relies on several other employees within Black Hills Energy's other multi-jurisdictional companies, who do not reside in Nebraska.

F. This rate Application seeks to set rates for the established rate areas on a consolidated basis. The rates established under the Application will be uniform to all customers of Black Hills Energy in Nebraska.

## **II. Communication**

A. Communications regarding this Application should be addressed to the following:

**Steven M. Jurek**  
Vice President- Regulatory, Gas Utilities  
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**Glenn W. Dee**  
State Mgr. Rates and Tariffs – NE  
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**Larry W. Headley**  
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## **III. Background and Reason for General Rate Filing**

A. Black Hills Energy's predecessor-in-interest, Aquila, Inc.'s last rate increase for Rate Area One, Rate Area Two and Rate Area Three was filed with the Commission on November 15, 2006, base test year beginning July 2005 and ending June of 2006. That case was

the first fully litigated case heard by the Commission with rate orders issued in June and July 2007. The prior rate cases of Aquila in Docket No. NG-0001, NG-0002, and NG-0003 in 2003 and SourceGas Distribution in NG-0036 in 2006 resulted in settlements approved by the Commission. Aquila concluded its 2006 rate application in Docket No. NG-0041 with court decisions from the Lancaster County District Court dated February 29, 2008, and received further Court approval of its rate case refund methodology on April 15, 2009 (citations omitted).

From the time Aquila's 2006 rate application was prepared and during the Commission's rate setting approval process, several events have occurred to render Black Hills Energy's current rates inadequate and its revenue requirements deficient. Among those events are increases in both the cost of providing natural gas services and the investment required to serve the growth in Black Hills Energy's Nebraska service areas. Black Hills Energy has also made significant investments of over \$28.8 million in the replacement and integrity of Black Hills Energy's natural gas distribution system. At the same time Black Hills Energy is experiencing modest growth in parts of its service area, it is also experiencing a decline in average customer usage across its natural gas distribution system. Thus, some of the growth is offset by customers using less natural gas. These events have a direct impact on the costs to deliver natural gas to customers located within our Nebraska Rate Areas.

B. Black Hills Energy determined the cost to provide natural gas service to Black Hills Energy's customers within Nebraska for the twelve months ending July 31, 2009 (base year). That base year was selected because it represents a full year under the operation of the Black Hills/Nebraska Gas Utility Company, LLC assets after the transfer of the Aquila assets in Nebraska. Black Hills Energy also compiled data for its Test Year using generally accepted utility practices to formulate its test year, which reflect known and measurable changes, as well as a normalization adjustment, and an annualized adjustment, as required by the Act, to the base year.

C. The rates currently being charged the customers in Rate Areas One, Two, and Three do not and will not provide Black Hills Energy with sufficient revenue to enable it to meet the cost of furnishing natural gas to customers within Black Hills Energy's Rate Areas. Nor will those rates allow Black Hills Energy to earn a fair and reasonable return on its investment in its designated Rate Areas One, Two, or Three. In fact, a comparison of revenues to the cost of service shows that Black Hills Energy will incur a revenue deficiency of approximately \$12.1 million during the test period if natural gas rates are not increased.

#### **IV. Authority and Request For Increase In Rates**

A. Under the governing laws of the United States, Nebraska law and United States Supreme Court precedent, Black Hills Energy is entitled to a fair and reasonable return on its property required for service to its customers. In determining rates pursuant to the Act, the Nebraska Public Service Commission must "give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property." See e.g., 66-1825 Neb. Rev. Stat. § 66-1825. See also, *Bluefield Waterworks and Improvement Co. v. Public Service*

*Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). The currently approved tariff rates of Black Hills Energy, if continued in effect, would not meet the standard established under Nebraska law and would result in the confiscation of the property of Black Hills Energy without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and of Article I, Section 3 of the Constitution of the State of Nebraska. Black Hills Energy is suffering and will continue to suffer irreparable injury so long as the existing rates continue in effect.

## **V. Rate Structure and Effectiveness**

A. Black Hills Energy therefore requests that the Commission adopt the new rates contained in the proposed rate schedules included herewith and by reference made a part hereof. Specifically, the proposed rate schedules provide for a customer charge of \$15.00 per month for residential customers and \$20.00 a month for commercial customers. In addition to the monthly customer charge, residential customers will pay \$0.28200, for the first 20 therms used in each month's billing cycle, and \$0.16290 for each additional therm used in that month's billing cycle. This charge is in addition to the cost of gas purchased and recovered under Black Hills Energy's Gas Cost Adjustment mechanism or other charges approved by the Commission. Commercial customers will pay \$0.28200, for the first 40 therms used in each month's billing cycle, and \$0.16290 for each additional therm used in that month's billing cycle. This cost is in addition to the cost of gas purchased and recovered under Black Hills Energy's Gas Cost Adjustment mechanism or other charges approved by the Commission.

B. Black Hills Energy requests that the rates shown in the proposed rate schedules be made effective after Commission approval in accordance with the provisions of the Act. See Neb. Rev. Stat. § 66-1838 (2003). By law, Black Hills Energy may collect those rates as interim rates, subject to refund, ninety (90) countable days after the date of filing for the increase. Neb. Rev. Stat. § 66-1838 (10)(b). Black Hills Energy intends on collecting 100% of its proposed rates under the interim rate statute, subject to refund, commencing on or about March 1, 2010.

C. With the exception of setting a basis for recovery of future eligible infrastructure system replacement cost and investments as permitted under the State Natural Gas Regulation Act or otherwise under Nebraska law, Black Hills Energy is not seeking authority to implement unique revenue decoupling rate recovery mechanisms (e.g., weather normalization adjustment (WNA) or limited cost recovery adjustment mechanisms), that provide for ongoing monthly rate adjustments. These types of revenue decoupling rate mechanisms, while beneficial, are not part of this rate application.

## **VI. Compliance with Filing Requirements for Rate Application**

A. Black Hills Energy submits herewith certain information in its rate filing in compliance with the Commission applicable rules and regulations for general rate filings. For example, Rule 004 of Chapter 9, of the Commission rules and regulations require Black Hills Energy's rate filing to include the following information: (1) definitions and general information, (2) computation of its revenue deficiency, (3) operating expense schedules for the base year and test year, (4) rate-of-return and cost-of-capital schedules, (5) a description of each pro forma adjustment, (6) a fully allocated class cost-of-service study, (7) operating revenue

schedules detailing the number and classification of customers, volume of sales, (8) operating revenue by customer classes for the base year on an unadjusted basis and for the test year on a normalized basis, and (9) current and proposed rates. See Neb. Admin. Code, Title 291, Chapter 9, Rule 4 (2003).

B. The above requirements for each Black Hills Energy consolidated Rate Areas can be found in different sections of the Application. Accordingly, all documents located behind designated tabs in this filing are hereby incorporated into this Application by reference.

C. The "Definitions" section of the filing describes the base year and test year, and defines other terms used throughout the filing, and provides other general information concerning the filing.

i. The "Financials" section contains a summary of the revenue deficiency computation.

ii. The "Base Year" section provides unadjusted "per book" financial information of the base year. Exhibits include rate base, operating revenues and expenses, capitalization, income tax computation, and return on equity.

iii. The "Test Year" section is financial information representing a fully adjusted base year. Exhibits include rate base, operating revenues and expenses, capitalization, income tax computation, and return on equity.

iv. The "Test Year Proposed" section describes the allocation of revenue deficiency between customer classes and presents the proposed rate design.

v. The "Adjustments" section provides an explanation of all adjustments made to the base year to arrive at known and measurable changes.

vi. The "Cost of Service" section provides Exhibits that explain cost allocations and the general methodology used for the cost-of-service study.

vii. The "Working Capital" section provides an overview of the methodology used to compute cash working capital required for day-to-day operations.

viii. The "Current Rates" section provides the current rate schedules.

ix. The "Red Line Rates" section provides only the proposed changes to the "Current Rates" in the required "redline format".

x. The "Proposed Rates" section provides only the proposed rate schedules.

D. In developing its test year and in preparing all of the Exhibits contained in this filing, Black Hills Energy followed generally accepted utility practices. Verification of all information by an officer of Black Hills Energy is attached to this application.

E. In addition to information described above, Black Hills Energy has provided the required number of its 2008 annual stockholders report. This report along with other information regarding Black Hills Corporation is also available online at [www.blackhillscorp.com](http://www.blackhillscorp.com).

F. Black Hills Energy's direct testimony in support of its General Rate Filing is filed herewith. The testimony of the witnesses supporting Black Hills Energy's General Rate filing is identified below. Among other things, the testimony explains in detail the form of rate design, rate recovery mechanisms, and other items accompanying Black Hills Energy's request herein.

## **VII. Testimony In Support of Filing**

A. The following witnesses support Black Hills Energy's request for a general rate increase and form of rate recovery. The testimony is contained in the filing. The list of witnesses is provided below:

<b><u>Company Witnesses</u></b>	<b><u>Area</u></b>
• Dan Mechtenberg, VP Nebraska Operations	Company Policy
• Richard G. Petersen, Director of Accounting	Accounting/Various Adjustments
• Anthony S. Cleberg, Exec. VP & CFO	Accounting and Finance Allocations
• Robert Hollibaugh, Director of Tax	ADIT and Taxes
• Don Nordell, Director of Business Operations	Capital Additions/Operations
• Glenn Dee, State Mgr. of Rates and Tariffs	Working Cap. & Other Adjustments
<b><u>Expert Witnesses</u></b>	<b><u>Area</u></b>
• Dr. William Avera, Pres. FINCAP, Inc.	Cost of Capital & Capital Structure
• Thomas J. Sullivan, Black & Veatch	Cost of Service – Rate Design
• Larry Loos, Black & Veatch	Weather Normalization
• Dr. Robert Livezey, Economic Consultant	Climate Change

## **VIII. Protective Order**

A. Black Hills Energy further notifies the Commission that it intends to file a request for a "Protective Order" as required under Commission Rule 005 to cover confidential information that will supplement its application and to cover any confidential information submitted in Black Hills Energy's work papers, testimony, or exhibits that will be filed throughout the review and approval of its rate application. See Neb. Admin. Code, Title 291, Chapter 9, Proposed Rule 005.01.

## **IX. Municipal Negotiation and Notices of Intent to Proceed Before Commission**

A. In accordance with Subsection (3) of section 66-1838 of the Act, Black Hills Energy hereby provides the notice required by the Act that it elects to forgo its right to negotiate directly with the Municipalities located within its consolidated Rate Areas, and instead desires to proceed with the review and approval of its general rate filing application by the Commission.

## **X. Tariff Changes and Supporting Documentation**

A. In support of this Application, and as provided in section 66-1838 of the Act, Black Hills Energy submits herewith the proposed revision to its Tariff to implement its proposed rate increases and other changes. Black Hills Energy has chosen at this time to propose minor changes to the General Rules and Regulations Tariffs to make them more in line with the current Commission Rules and Regulations. A "redline" version of the tariff changes are included in this filing per Rule and Regulation 157, issued by the Nebraska Public Service Commission.

## **XI. Request for Necessary Waivers**

A. While Black Hills Energy believes this application to be in full accord with applicable law, Black Hills Energy respectfully requests the granting of such waivers as necessary for the acceptance of this application.

## **XII. Rate Case Surcharge**

A. Pursuant to § 66-1841 of the Act, Black Hills Energy hereby requests continuing authority to collect its regulatory costs, including the Commission's assessment through a surcharge mechanism.

## **XIII. Conclusion**

WHEREFORE, Black Hills Energy requests that the PSC issue an order accepting and approving this Application for Rate Increase, including the proposed rate schedules included herewith.

Respectfully submitted,

**BLACK HILLS/Nebraska Natural Gas  
Utility Company, LLC**

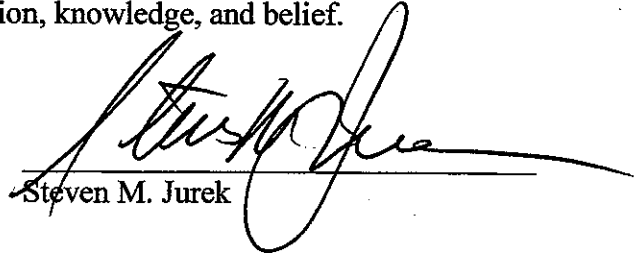
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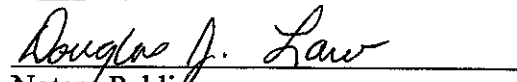
# VERIFICATION

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

Steven M. Jurek, of lawful age, being first duly sworn, deposes and says that he is the Vice President of Regulatory, Gas Utilities for Black Hills Corporation, that he has read the foregoing Application, knows the contents thereof, and that the statements and allegations therein contained, including the information provided herewith pursuant to the State Natural Gas Regulation Act, are true to the best of his information, knowledge, and belief.

  
\_\_\_\_\_  
Steven M. Jurek

SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
Notary Public

